

Children's Charities' Coalition for Internet Safety



Chris Mullins MP
Chair
Home Affairs Select Committee
House of Commons
London SW1

27th February, 2003

Dear Chris,

Internet-related issues in the Sex Offences Bill

The arrival of the Internet as a mass consumer product, and one which particularly appeals to and is used by children and young people, has led to a range of consequences which were neither foreseen nor intended by its original architects.

The emergence of the Internet as a mass consumer product has coincided with, and doubtless has partly been driven by, the emergence of a range of other easy to use, widely available, digital technologies, for example stills and video cameras, and this has added to the complexity of a range of issues which modern society needs to address. It requires us to look rather differently at a number of things if we are to understand properly the way that the digital era is changing the dynamics of what hitherto were, perhaps, unexceptional or commonplace ideas or practices. Some of these arise in the context of the Sex Offences Bill and we shall be making representations accordingly as the Bill progresses through Parliament. This letter to you sets out in broad terms what we will be saying in relation to those various Internet-related matters. I would, of course, be happy to supplement this letter with oral or further written evidence should you or any members of your Committee have any questions arising from it.

An example of the kind of issue which I think we need to examine anew relates to the age of consent for participating in pornography.

At the moment it is commonly supposed that the age of consent to participate in pornography is 16, the same as the legal age of consent for sex in most of the United Kingdom (in Northern Ireland it is 17). You will be aware that the UN Convention on the Rights of the Child, to which the UK is a signatory, requires that all children be protected from "...all forms of sexual exploitation..." and this includes "...The exploitative use of children in pornographic performances and materials." The UN Convention defines a child as being a person who is less than 18.

The Sex Offences Bill proposes, at clause 52, to raise the age of consent to participate in pornography from 16 to 18. Ostensibly this is principally aimed at outlawing a child's possible participation in commercial

pornography. We very much welcome this proposal which brings us closer to the UN Convention position. Elsewhere, however, the Bill allows an exception. It proposes to permit a child of 16 or 17 to agree to take part in pornography where the distribution of the image is only to the child himself or herself and to the person taking or making the image. You will note the UN Convention does not make such a demarcation.

Thus, in the Bill, the proposition would seem to be “Leaving aside commercial considerations, if someone is old enough to have sex they should be old enough to be able to take pictures of themselves doing it.” At one level, *pace* the UN Convention, this seems an unexceptional idea, but in the digital era we need to think more deeply about what this is likely to mean in practice.

The simple truth is that nowadays people are increasingly using digital cameras to take pictures, both videos and stills, and the images they generate are very likely to be held on a computer, or on a CD or some other digital device or storage medium. Even where a person eschews the advantages of a digital camera, it is now commonplace, for example, for 35 mm film to be developed and returned to the customer both in the form of conventional pictures with negatives attached, but also on a CD. The point is that images are now routinely being digitised and stored on computers or other digital media which can easily be connected to the Internet. Any such image is therefore, potentially, just one or two mouse clicks away from the Internet. Once an image is on the Internet it becomes, in effect, a permanent, ineradicable record. If that image is one of a child engaged in sexual activity it could haunt and harm that child for the rest of his or her life. No child should be put in the position where they have to make such a decision. At the very least, only an adult should be legally capable of consenting to something which potentially has such permanent and damaging consequences.

Moreover, once the image is on the Internet it will almost invariably and probably very rapidly find its way into the hands of criminals who will either make it part of their stock-in-trade which they sell on-line, or it will be used in exchange for other images. Thus, even if it started out as a non-commercial image, as more than one Hollywood actress can testify, there is a severe risk that it will rapidly become publicly available via a great many commercial web sites and Internet Newsgroups.

Children of 16 and 17 fall in and out of relationships, sometimes with great rapidity. Often they might become involved with a much older person who, in effect, has an abusive, or at any rate a highly manipulative, relationship with them. Either way, in these and other circumstances one could envisage, the possibility of such relationships leading to the creation of digital images of the child engaged in sexual activity and these later finding their way on to the Internet, is one a civilized society ought to guard against as best it can.

I appreciate that the Bill says that any form of distribution of a consensual image of a child of 16 or 17 involved in sexual activity is a crime, but our point is that the danger to the child begins once the image is created. And if someone is minded to distribute such an image, perhaps sell it for cash, the fact that he or she had once made or possessed it lawfully might diminish or obstruct an appreciation of the fact that such distribution is illegal. I would guess the most likely scenario is that of the disgruntled boyfriend publishing the picture as an act of revenge against his ex-girlfriend for being dumped. Again the fact that he had initially lawfully made and possessed the image

could diminish his sense that he might be about to commit a crime, alternatively he will not care. Either way, with two clicks of the mouse the damage to the girl is done, and can never be recovered or undone.

For these reasons I think a single age limit of 18 is much to be preferred, across the board. A by-product of this would be to simplify greatly the tasks of the police or other investigators who work in this area.

Of course it is true that it has been possible for some time for “ordinary” pictures, pictures on paper or on video, to be digitised and then transferred to the Internet, and this has indeed been happening a great deal. Our point, however, is that with the rapid and continuing growth in the use of digital cameras, the barriers to this kind of exploitation of images are dissolving, the potential for this kind of misuse is now developing on a much larger scale and therefore we need to rethink our attitudes towards activities of these kinds.

Clause 16: marriage exception

We are seeking clarification of the meaning of sub-clause 1(c)

Is it meant to say “the conduct does not involve the taking or making of a photograph or pseudo-photograph of any other person engaging in sexual activity”?

If that is what it is meant to say, and our amendment to clause 52 is also accepted (raising the age limit for participation in pornography to 18), we would like to confirm that it would apply here also i.e. that in relation to pornography-related activity even within marriage, 18 remains the minimum age limit.

Clause 17:

We are seeking to clarify whether, if the person is intending to travel to a meeting at a location which is outside of England, Wales or Northern Ireland, he can still be arrested by police within England, Wales or Northern Ireland. 17(1) (b) and 17 (2) (a) suggest he could be so arrested, and 17(2) (b) (v) confuses the situation.

In our view the ultimate destination ought to be irrelevant as the whole point of the “travelling to” limb of the offence is to stop the meeting happening.

Clause 52:

Delete all after sub-clause 2

For our reasoning see above.

I would also delete the reference here and elsewhere to images made before the commencement. There was a time when child pornography was legal. Then it became illegal. It ought to be the same here. Abolishing references to images made before the commencement will also greatly reduce the burden on law enforcement who might be forensically taxed if asked to establish when a particular image was made.

Clause 53:

Delete sub-clause 1(a)

An exemption should only be extended to persons who have been authorised within the terms of the remainder of the clause. If a UK-based solicitor needs an exemption in order to assist his client properly, he can get an exemption from one of the designated persons. If an overseas police force or lawyer requests the assistance of someone operating within the UK's jurisdiction, then they should be in the same position. If the volume of requests becomes too great the designated person might delegate their power to named officials.

Clauses 10 and 11

I assume there is no difficulty in either of these offences being committed "virtually" e.g. via email, instant messaging, in a chat room or similar?

Clauses 12 & 13

12 seems to require a physical presence. Is that correct, or could the presence be virtual e.g. via a web cam? Or would 13 cover any Internet situations of a similar nature?

Clause 13

(1) (a) add "or for gain" after the words "sexual gratification" in the first line.

delete the word "intentionally" in the first line of 13(1)(a)

or insert new Clause 14

Publishing sexual material

1. A person aged 18 or over (A) commits an offence if –
 - (a) for gain or in the expectation of gain he intentionally publishes or otherwise displays photographs or pseudo-photographs of a person engaging in sexual activity, or
 - (b) for gain or in the expectation of gain he intentionally publishes or otherwise displays any other forms of sexual material
 - (c) and it can be shown that he deliberately set out to present items referred to in (a) or (b) to a child (B) who is under 16, or
 - (d) it can be shown that he was careless or reckless as to whether or not items covered by (a) or (b) were presented to B

Yours sincerely,



John Carr